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In the Supreme Court of the United States

OCTOBER TERM, 1992

CHURCH OF THE LUKUMI BABALU AYE, INC. AND ERNESTO PICHARDO, PETITIONERS

v.

CITY OF HIALEAH

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR THE HUMANE SOCIETY OF THE UNITED STATES, AMERICAN HUMANE ASSOCIATION, THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, ANIMAL LEGAL DEFENSE FUND, INC., AND MASSACHUSETTS SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether, under this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), the challenged Hialeah ordinances should be sustained as "neutral, generally applicable regulatory law[s]," not requiring any "compelling state interest" justification.

2. Whether the ordinances are in any event justified by the City's compelling interests in public health and animal protection.

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INTEREST OF THE *AMICI CURIAE*

The *amici*, the Humane Society of the United States ("HSUS"), American Humane Association ("AHA"), the American Society for the Prevention of Cruelty to Animals ("ASPCA"), Animal Legal Defense Fund, Inc. ("ALDF"), and Massachusetts Society for the Prevention

of Cruelty to Animals ("MSPCA"), are organizations that have long dedicated themselves to preventing cruelty to animals, promoting animal welfare, and ensuring respect for the well-being of all living creatures. They have a substantial interest in supporting government measures that seek to protect animals and to prevent the wanton and willful infliction of cruelty upon animals. To further the interests of animals locally, nationally, and internationally, the *amici* sponsor, draft, and testify in support of legislation advancing animal welfare, investigate and enforce state laws and ordinances preventing cruelty to animals, educate the populace concerning the humane treatment of animals, and operate animal hospitals and shelters. The questions raised here are of specific concern to *amici*, one of which (HSUS) was directly involved in drafting and testifying in favor of the Hialeah ordinances being challenged.[1]

STATEMENT OF THE CASE

Petitioners' attack on the Hialeah ordinances proceeds from the erroneous premise that the ordinances prohibit only the sacrifice of animals for religious reasons. In fact, however, the ordinances broadly ban *all* ritualistic killing of animals, as well as other forms of animal cruelty and unnecessary killing. Petitioners attempt to draw comfort from this Court's recent decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), but in fact *Smith* strongly supports the validity of the ordinances. The Court in *Smith* acknowledged that a Free Exercise Clause violation could occur if a state "sought to ban [physical] acts or abstentions *only* when they are engaged in for religious reasons, or *only* because of the religious belief that they display." *Id.* at 877 (emphasis supplied). Petitioners try throughout their brief to characterize the Hialeah ordinances as just such measures, but they do so only by disregarding the language of the ordinances themselves and the well-supported factual findings of the district court. The district court's thorough opinion, which itself was cited with apparent approval in *Smith*, *id.* at 889, demonstrates that the ordinances are measures of general applicability, not limited to religious practices, and that the ordinances serve compelling state interests in public health and animal protection.

[1] Letters reflecting the parties' consent to the filing of this brief have been filed with the Clerk of the Court.

A. Hialeah's Regulation Of The Killing Of Animals

The four ordinances at issue here were adopted by the City of Hialeah in 1987. The ordinances are similar to provisions that have been adopted in other cities.[2]

Initially, on June 9, 1987, the Mayor and City Council of Hialeah, observing that the citizens of Hialeah had "expressed great concern over the potential for animal sacrifices being conducted in the City," adopted in its entirety an existing Florida statute dealing with cruelty to animals. Pet. Br. A1.[3] Chapter 828 of the Florida Statutes, which was adopted by the City in Ordinance No. 87-40, had for years provided criminal penalties for anyone who "unnecessarily . . . tortures, torments, deprives of necessary sustenance or shelter, or unnecessarily or cruelly beats, mutilates, or kills any animal, or causes the same to be done . . . ." Pet. Br. A5. Hialeah chose to make such conduct a violation of local, as well as state, law.

Three months later, on September 8, 1987, the City adopted Ordinance No. 87-52, the operative portion of which is entitled "Prohibition Against Possession of Animals for Slaughter or Sacrifice." Pet. Br. A1-A2. The ordinance generally prohibits the sacrifice or slaughter of any animal, except for the slaughtering of animals

[2] *See, e.g.*, Chicago Code § 7-12-300 (1990); Los Angeles Code § 53.67 (1990).

[3] "Pet. Br." refers to petitioners' brief in this Court.

that were specifically raised for food purposes and that are slaughtered by licensed establishments operating in properly zoned areas and in accordance with state and local law and regulations. Under the ordinance's definition, "sacrifice" means "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." *Id.* at A1.

Finally, on September 22, 1987, the City adopted Ordinance No. 87-71 and Ordinance No. 87-72. Based on the City Council's finding that "the sacrificing of animals within the city limits is contrary to the public health, safety, welfare and morals of the community," Ordinance No. 87-71 flatly prohibits the sacrifice of any animal in Hialeah. The ordinance's definition of "sacrifice" is the same as that used in Ordinance No. 87-52. Pet. Br. A2-A3. Ordinance No. 87-72 prohibits the "slaughter [of] any animal on any premises in the City of Hialeah, Florida, except those properly zoned as a slaughter house, and meeting all the health, safety and sanitation codes prescribed by the City for the operation of a slaughter house." *Id.* at A3. Under the ordinance's definition, which follows the definition used in Ordinance No. 87-52, "slaughter" means "the killing of animals for food." Ordinances 87-71 and 87-72 also authorize registered societies and associations for the prevention of cruelty to animals to investigate animal cruelty complaints.

For more than a century, Florida has sought to outlaw animal cruelty. *See* Fla. Stat. ch. 3921 (1889). Chapter 828 of the Florida Statutes, which Hialeah adopted in Ordinance No. 87-40, prohibited animal sacrifice and other forms of animal cruelty long before Hialeah enacted the ordinances now under attack. *See* Fla. Stat. ch. 4971 (1901), the precursor of Fla. Stat. § 828.12 (1987).

Like the Oregon controlled substances statute that was at issue in *Smith* (*see* 494 U.S. at 874), the Florida statute adopted by Hialeah included some secular exceptions. *See, e.g.*, Fla. Stat. Ann. §§ 828.22-828.26 (slaughter

of animals for food); § 828.02 (advancement of medical science). The Florida law expressly exempted the ritual *slaughter* of animals, *see* Fla. Stat. Ann. § 828.22(3), provided the slaughter was humane, *see* § 828.23(7)(b), but the State never permitted animal *sacrifice*. *See* Fla. Atty. Gen'l Opinion 87-56, at 5, 8 (1987) (the term "slaughter" as used in sections 828.22 to 828.26 refers only to killing animals for food, and Section 828.12 prohibits sacrifice of animals for a purpose other than food). As the district court recognized, "[t]his Ordinance [*i.e.*, Ordinance No. 87-52] was not meant to single out persons engaged in ritual sacrifice, but to put those persons on notice that the state exemption for ritual slaughter only applied to commercial ritual slaughter, done in slaughterhouses." Pet. App. A39.

B. Church Of The Lukumi Babalu Aye

1. *General Background*

Petitioner Church of the Lukumi Babalu Aye, Inc. is a non-profit corporation that promotes and practices the Lukumi religion in South Florida. The religion is also referred to as Yoba, Yoruba, or Santeria. Pet. App. A4. Petitioner Ernesto Pichardo is the president of the petitioner church. Although the practice of Santeria dates back many years, the religion lacks any written code or doctrine (with the exception of written tenets recently prepared by Pichardo, possibly in contemplation of this litigation). *Id.* at A7-A8. The religion involves no organized worship and no central authority for the training or certification of priests. *Id.*

On April 1, 1987, the petitioner church took possession of a site in the City of Hialeah, intending to use the property to establish a church, school, and cultural center. Pet. App. A22. After routine administrative inspections, the City issued a certificate of occupancy to the Church. *Id.* at A26.

2. *Animal Sacrifice*

As a part of their rituals and ceremonies, practitioners of Santeria sacrifice animals, including chickens, pigeons,

doves, ducks, guinea fowl, goats, sheep, and turtles. Pet. App. A9. The sacrifices are performed in rites of initiation, healing, and funerals. *Id.* at A15-A17. On the basis of Pichardo's testimony, the district court estimated that between 12,000 and 18,000 animals are sacrificed annually in Dade County in initiation rites alone. *Id.* at A15 n.22. Most of these animals are obtained from botanicas or local farms that breed the animals specifically for sacrifice.[4] *Id.* at A17. While at the botanicas or farms, the animals are fed and watered only irregularly, and they are frequently housed in "overcrowded and filthy" conditions. These conditions can cause intense suffering. *Id.* at A17-A18.

After being purchased for Santeria rituals, animals are often stored with animals of other species under crowded conditions, causing "great stress and anxiety." Pet. App. A14. During the sacrifices, animals can sense the bodily secretions of other animals that have just been killed, thus producing intense fear, and sometimes pain, in those animals awaiting sacrifice. *Id.* at A14 & n.19. Moreover, as the district court correctly found, the method of killing used in Santeria sacrifices is not humane. *Id.* at A13. The stabbing or puncture method used by Santeria practitioners "is not a reliable or painless method of severing both carotid arteries" and therefore "is not accepted from either a traditional standpoint or a humane standpoint." *Id.*

The Santeria sacrifices create wastes, resulting in obvious disposal problems. After an animal is killed, its blood is drained into clay pots. Pet. App. A15. The animal is then decapitated and its carcass removed. *Id.* The animal's blood is either placed before the Santeria deities or sprinkled on worshipers or drunk. *Id.* at A15 & n.21. Some of the animals are butchered and eaten, although the sheer number of animals sacrificed makes it highly implausible that this procedure is followed for

[4] Botanicas are religious specialty stores, many of which traffic in sacrificial animals and other items associated with Santeria. Pet. App. A17 n.28.

all of them. *Id.* at A16. Moreover, it is undisputed that animals used in healing and death rites are not consumed and must be disposed of in other ways. *Id.* at A16-A17 & n.27.

Not coincidentally, animal remains are often found in public places in South Florida, including near rivers and canals, by four-way stop signs, under palm trees, and on people's lawns and doorsteps. Pet. App. A18 & n.29. At least some of these remains have been found to be the result of Santeria practices. *Id.* at A18.[5]

[5] In what has become part of the aquatic scenery, decapitated chickens and other animals are routinely seen floating in the canals and waterways that meander through South Florida. G.C. Chavez, *Santeria: A Cult of Sacrifice*, U.P.I., Oct. 11, 1981. Practitioners of Santeria "keep garbage crews busy hauling 48 decapitated chickens from the water each month." M. Warren, *That Dirty Water; Miamians Love and Hate Their Smelly River*, L.A. Times, Apr. 12, 1992, at A2, col. 1.

Lamentably, the carnage is not limited to South Florida. In Washington, D.C., when a gathering of about 200 people was interrupted by Humane Society officers who seized a goat, calf, pig, and other animals intended for sacrifice, the person in charge of the sacrifice threatened to kill the animals in front of the White House. C. Sanchez, *Animal Sacrifice Ritual Spurs Rights Debate in D.C.; Santeria Priest Threatens Slaughter Protest*, Wash. Post, Nov. 30, 1987, at C1. As a result of animal sacrifices in New York City, park officials often find items like a goat's head or paper bags filled with chicken feet and blood-smeared paper dolls. A. Jetter, *Goat Head in Park Stirs Santeria Fear*, Newsday, May 2, 1989, at 19. In suburban New Jersey, men were arrested after beheading animals in a ceremony, smearing their garments with the animals' blood, and drinking some of the blood. Twenty-one people in the nearby Atlantic City area were arrested for similar cruelty to animals. Authorities found not only animal carcasses at the sites of these rituals, but cauldrons of blood as well. J. Meyer, *Animal-Slaughter Cult Growing, Police Say*, U.P.I., July 25, 1985. There have been so many complaints in Los Angeles concerning the discovery of animal bodies in parks and trash containers that the City Council recently enacted an ordinance banning the sacrifice of animals. G. Braxton, *Challenge to Sacrifice Law Blocked*, L.A. Times, Nov. 10, 1990, at Metro B4. In Santa Monica, California, the sacrifice of three lambs and a dozen chickens caused an overflow of blood from the basement drain into the parking lot of

C. The District Court's Decision

In September 1987, petitioners brought this action, seeking declaratory and injunctive relief against the City on the ground that the Hialeah ordinances allegedly violated petitioners' First and Fourteenth Amendment rights to the free exercise of religion. J.A. 6-17. Following a nine-day bench trial, during which the court heard extensive factual and expert testimony regarding Santeria, the effect of Santeria practices on animals, and public health and safety concerns arising from animal sacrifice, the district court granted judgment for the City.

The court flatly rejected petitioners' contention that the ordinances were passed to discriminate against the church or to prevent the church from establishing a physical presence in the City. The court found that "[t]here was no evidence to support this contention." Pet. App. A28. The City Council did not intend to single out petitioners for special treatment; rather, "the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by." *Id.*; *see also id.* at A49 ("The ordinances are not targeted at the Church of the Lukumi Babalu Aye and practitioners of Santeria but are meant to prohibit all animal sacrifice, whether it be practiced by an individual, a religion, or a cult"). Likewise, the court stressed that the ordinances focused on conduct, not on the beliefs associated with Santeria or any other religion: "[T]he ordinances were not passed to interfere

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an apartment building. M. Chazanov, *The Slaughter on Franklin Street—'It's Not a Big Deal'*, L.A. Times, Mar. 21, 1991, at Metro B3. The Chicago police found more than a dozen heads of goats, chickens, and other animals in a single apartment often frequented by white-robed worshipers who participated in animal sacrifices. *Police Rescue Animals From Alleged Cult Group*, Reuters, June 9, 1987. In a Falls Church, Virginia cemetery, the site of at least five other incidents, a grieving widow found a gutted chicken, stuffed with a rubber doll in a heart-shaped piece of meat, splayed across her husband's grave and a lamb's carcass decaying on another grave. *Strange Cemetery Rituals Reported*, U.P.I., Nov. 12, 1991. (All of the articles cited in this footnote are available in LEXIS, Nexis Library, Omni File).

with religious beliefs, but rather to regulate conduct." *Id.* at A23; *see also id.* at A38 ("the ordinances clearly are directed at conduct and not belief").

The district court acknowledged that the Hialeah ordinances do impose a burden on petitioners' religious practices. Pet. App. A42. Accordingly, acting prior to this Court's decision in *Smith*, the court applied a balancing test derived from *Sherbert v. Verner*, 374 U.S. 398 (1963), to determine whether that burden was justified. The court found that "[t]he ordinances have three compelling secular purposes: 1) to prevent cruelty to animals; 2) to safeguard the health, welfare and safety of the community; and 3) to prevent the adverse psychological effect on children exposed to such sacrifices." Pet. App. A23. The court concluded that these interests were sufficient to justify the absolute prohibition on animal sacrifice, and it further held that "any effort to exempt purportedly religious conduct from the strictures of the City's laws would significantly hinder the attainment of those compelling interests." *Id.* at A47.

D. The Court Of Appeals' Decision

The court of appeals affirmed. Giving petitioners the benefit of the doubt, the court of appeals found that the ordinances satisfied *Sherbert*'s "arguably stricter standard"; the court therefore had no occasion to apply this Court's intervening decision in *Smith*. *See* Pet. App. A2 & n.1.[6]

SUMMARY OF ARGUMENT

I.

State and local governments are not obliged by the First Amendment to create religious exemptions to neutral and generally applicable regulatory laws. Because of this principle, the City may lawfully prohibit the ritual or ceremonial killing of animals. The Hialeah ordinances fall squarely within the category of neutral and generally ap-

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[6] The court of appeals did not consider the governmental interest in guaranteeing the welfare of children.

plicable laws described in *Smith*. The ordinances do not discriminate against religion; rather, they generally prohibit animal sacrifice and other forms of animal cruelty, regardless of the reasons for such actions.

This result is not changed because the ordinances may have been adopted in response to petitioners' announced intention to conduct animal sacrifice in Hialeah. This Court has not hesitated to uphold the regulation of socially harmful conduct even where the conduct is directly or even exclusively grounded in religion. Nor are the ordinances invalid because of an alleged improper or discriminatory motive among concerned citizens in Hialeah who supported the measures. As the district court correctly found, the purpose of the ordinances was to promote the health and welfare of the community and to prevent cruelty to animals. Neither of these purposes singles out religious practices for special regulation.

II.

Even if the Hialeah ordinances cannot be sustained as neutral, generally applicable regulatory laws, they should nevertheless be upheld because of the compelling governmental interests that they serve. In addition to the interest in public health and safety (well described in the district court's opinion), the ordinances are grounded in a fundamental public policy against unnecessary cruelty or killing of animals. That public policy originated in 17th century New England, and was manifested, throughout the 19th century, by the universal enactment of anti-cruelty statutes (supplemented by a mass of more specialized state and federal protection statutes). The policy continues to be reflected in the broad remedial effects that such laws have had upon animal use, and by the widespread establishment of and public support for humane societies, many of which have been granted enforcement powers. Under this legal regime, the "necessity" of animal killing has generally been determined by reference to tangible human needs such as food, the prevention and treatment of disease, and safety. The public policy against animal cruelty and unnecessary killing is a hallmark of

the progress of American civilization and a part of the basic legal and moral fabric of this society. Furthering that policy clearly constitutes a compelling government interest.

Moreover, as the courts have recognized for more than a century, the anti-cruelty statutes were based on the moral idea that cruelty and unnecessary killing of animals deadens conscience toward all forms of life, thereby promoting violence toward human beings. The state interest in protecting animals is therefore closely related to, and directly serves, the compelling state interest in human life, safety, and public order.

ARGUMENT

I. THE HIALEAH ORDINANCES ARE NEUTRAL AND GENERALLY APPLICABLE REGULATORY LAWS

A. The Ordinances Prohibit All Animal Sacrifices—They Do Not Discriminate Against Religion

The challenged ordinances do not apply merely to petitioners or to the Santeria religion or to religious groups; they impose a neutral and generally applicable ban on animal sacrifices by anyone. The objectives that the ordinances advance—the enhancement of the community's health and welfare and the prevention of cruelty to animals—are clearly secular. As a result, the ordinances satisfy the standard set forth by this Court in *Smith*.

Smith determined that the Free Exercise Clause does not require a neutral and generally applicable regulatory law to make special exceptions for religious practices. Respondents in *Smith* were fired from their jobs with a drug rehabilitation organization because they used peyote, a hallucinogen listed as a controlled substance under both federal and state law. Respondents ingested peyote as part of a religious ceremony at their church. Oregon denied respondents unemployment compensation benefits because respondents were discharged for work-related misconduct. The possession or consumption of peyote was a

crime under Oregon's controlled substance law. Although the Oregon law had certain secular exceptions, which regulated the use of narcotics through licensed practitioners, it provided no exception for the religious use of peyote. This Court held that the First Amendment does not require Oregon to provide a "religious practice" exception to the State's general prohibition against peyote use.

A law is valid, *Smith* concluded, when it regulates the conduct of all citizens without discrimination, and does not target "religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs." 494 U.S. at 881-82. Any other rule the Court said, inevitably "would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind . . . ." *Id.* at 888. As an example of the kind of "civic obligations" that would be affected, the Court listed "social welfare legislation such as . . . animal cruelty laws," and it cited the district court's decision in this case. *Id.* at 889.

Nor would it be possible, the Court said, to limit religious exemptions solely to conduct that is "central" to a person's religion. Such a rule would embroil the courts unavoidably in efforts to determine how important or how central a particular regulated or prohibited practice is to a person's religious beliefs. 494 U.S. at 886-87. Such efforts to measure the "centrality" of particular practices or beliefs and, on that basis, to require legislatures to carve out personal exceptions to general laws and regulations would, in the Court's view, merely exacerbate the tension between the First Amendment and the obligation of state and local governments to regulate the conduct of their citizens. *Id.* at 885.

The Hialeah ordinances, like the state law they adopt, fit well within the description of "neutral and generally applicable" regulatory laws.[7] The plain meaning of the

[7] That ritual or ceremonial animal killing would be prohibited by state law, even if the ordinances were invalidated, raises serious questions about the Church's standing under Article III of the Constitution. *See Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 37-39 (1976).

ordinances' text proves the point. As the district court found, the ordinances effect an outright ban on ritualistic or ceremonial animal killings, whether such acts are performed by a fraternity, a practitioner of voodoo, a satanic worshiper, a follower of Santeria, or a person who simply gets his kicks out of sacrificing animals. *See* Pet. App. A28 ("the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by"). Contrary to petitioners' argument, the killer's motivation —to be initiated into an organization, to worship, or to seek a warped sense of pleasure—is irrelevant.

The City's use of the phrase "ritual or ceremony" is religiously neutral. As the district court observed, " 'ritual' is not synonymous with 'religion.' " Pet. App. A39 (citing *Jones v. Butz*, 374 F. Supp. 1284, 1292-93 (S.D. N.Y.), *aff'd*, 419 U.S. 806 (1974)). Nor does the phrase "ceremony" have a religious significance. The word "ceremony," defined as "a formal act or series of acts prescribed by ritual, protocol, or convention . . . a conventional act of politeness or etiquette . . . an action performed only formally with no deep significance . . . prescribed procedures," Webster's New Collegiate Dictionary 222 (9th ed. 1990), has been used to describe numerous nonreligious acts, including fraternity and sorority activities, *see State v. Capitol Benefit Ass'n*, 21 N.W.2d 890, 892 (Iowa 1946), marriages, *see Sharon v. Sharon*, 16 P. 345, 350 (Cal. 1888), or certain forms of political protest, *see State v. Hodsdon*, 289 A.2d 635, 638 (Del. Super. Ct. 1972).

The word "sacrifice" is also religiously neutral. Contrary to petitioners' claim that "sacrifice is an explicitly religious practice," Pet. Br. 16, the word "sacrifice" is expressly defined in neutral terms in the ordinances. Pet. Br. A1, A2-A3. Whatever meaning "sacrifice" may have in the abstract is irrelevant.

Thus, as the plain meaning of the ordinances confirms, Hialeah does not ban sacrifices "only when they are

engaged in for religious reasons, or only because of the religious belief that they display," *Smith*, 494 U.S. at 877; animal sacrifice is banned altogether as inconsistent with the community's values.

B. The Ordinances Do Not Have A Discriminatory Purpose

1. *A Regulatory Law Is Not Discriminatory Simply Because Its Enactment Is Prompted By The Emergence Of New Religious Practices*

The district court found as a matter of fact that the challenged ordinances have a neutral and secular purpose. The circumstances surrounding the enactment of the ordinances do not alter that fact. Even if the ordinances were adopted in response to petitioners' activities, that would not mean that the ordinances discriminate against religion. Lawmakers are empowered to eradicate socially harmful conduct even if the only people who engage in the conduct are inspired to do so by religious tenets.

Reynolds v. United States, 98 U.S. 145 (1878), for example, demonstrates that a regulatory law can pass muster under the Free Exercise Clause even if it was promulgated in specific response to moral objections to a religious practice. The federal statute at issue in *Reynolds* was enacted to address the social problems associated with polygamy, which was practiced by members of the Church of Jesus Christ of Latter-Day Saints. The federal law specifically annulled an ordinance in which the Territory of Utah had adopted Mormon laws—including those encouraging polygamy—as the laws of the Territory. *See* Cong. Globe, 37th Cong., 1st Sess. 2506 (1862). This Court rejected a First Amendment challenge to a conviction for violating the federal prohibition against bigamy:

> [T]he only question which remains, is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free.

> This would be introducing a new element into criminal law. . . . To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds, 98 U.S. at 166-67.

Similarly, there was no legislative need to address snake handling until such a ceremonial religious practice emerged. Yet every free exercise challenge to the constitutionality of snake handling laws has been rejected. *See, e.g., Swann v. Pack*, 527 S.W.2d 99 (Tenn. 1975), *cert. denied*, 424 U.S. 954 (1976); *Lawson v. Commonwealth*, 164 S.W.2d 972 (Ky. 1942); *State v. Massey*, 51 S.E.2d 179 (N.C.), *appeal dismissed sub nom. Bunn v. North Carolina*, 336 U.S. 942 (1949). Like the ordinances at issue here, the snake handling laws are generally applicable to the community at large. It is undisputed that such laws were enacted to regulate socially harmful conduct in religious ceremonies, but that fact has not affected the validity of the statutes. Both *Lawson* and *Massey* have been favorably cited by this Court as a proper exercise of state police power, despite the religious overtones of the regulations. *See Smith*, 494 U.S. at 889 (citing *Massey*); *Abington School District v. Schempp*, 374 U.S. 203, 249 n.14 (1963) (Brennan, J., concurring) (citing *Lawson* and *Massey*).

The Sunday closing cases also provide examples of religiously-motivated, yet generally applicable and neutral laws. This Court recognized in *McGowan v. Maryland*, 366 U.S. 420 (1961), that Sunday closing laws evolved from "wholly religious sanctions." *Id.* at 435. The Maryland statute challenged in *McGowan* could not have been more explicit in its religious underpinnings; the statute prohibited work or labor on "the Lord's day, commonly called Sunday" or "[t]he Sabbath day, commonly called Sunday." *Id.* at 453, 456. Notwithstanding the obvious religious backdrop, this Court held that Sunday closing laws offend neither the Establishment Clause, *see id.*

at 449, nor the Free Exercise Clause, *see Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) (plurality opinion).

These cases demonstrate that laws can be neutral and generally applicable, despite the presence of religious conduct as a catalyst for the legislation. They establish that the government always retains a paramount interest in the preservation of life, health, and safety, and in the suppression of societal violence, even in the face of conduct that is grounded in religious belief.[8]

2. *The Subjective Intent Of Persons Supporting The Ordinances Is Irrelevant*

The neutral and secular purpose of the Hialeah ordinances also is not abrogated by speculation about the individual motives of persons who sought to prevent animal sacrifice in their community. By citing to selective portions of the minutes of the City Council's meetings, petitioners misdirect the Court's inquiry from the purpose of the ordinances to the subjective motivations of concerned citizens and a few Council members. This Court, however, has recognized the important distinction between legislative purpose and motive. A law appropriating funds for military weapons, for example, may have the purpose of advancing national security; a particular legislator voting in favor of the law may be motivated primarily by the opportunity to employ his constituents. Here, the City's legitimate secular and neutral purposes for the ordinances have been established. Speculation about the circumstances in which the ordinances were

[8] The Founding Fathers, aware as they were of the potential for religious belief to be a deep reservoir of justifications for extremes of nonconforming behavior, contemplated similiar limits to free exercise. James Madison believed that religion must be subject to civil power when it trespasses on private rights or the public peace. Letter from James Madison to Edward Livingston (July 10, 1822), in 5 *The Founders' Constitution* 105 (P. Kurland and R. Lerner eds., 1987). Thomas Jefferson's views were in accord. T. Jefferson, A Bill for Establishing Religious Freedom (June 12, 1779), reprinted in *id.* at 77.

adopted—including the subjective motives and comments of individual Council members and citizens—is improper.

The Court has cautioned repeatedly, and in a variety of contexts, that an otherwise constitutional statute will not be struck down on the basis of an alleged illicit legislative motive. *See Lynch v. Donnelly*, 465 U.S. 668, 680-81 (1984); *Palmer v. Thompson*, 403 U.S. 217, 224-25 (1971); *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *Arizona v. California*, 283 U.S. 423, 455 n.7 (1931); *McCray v. United States*, 195 U.S. 27, 56 (1904); *Fletcher v. Peck*, 10 U.S. 87, 130 (1810). Moreover, as several Justices have observed, the task of discerning, let alone evaluating, the collection of relevant motives underlying a law is a hazardous and nearly impossible one.[9] The legislative process is by design one of compromise, collective decision-making, and mixed motivation. The motives of individual Council members and citizens who chose to speak on the record cannot now be ascribed to the full City Council and the Mayor, who together adopted the ordinance.[10] Where legitimate secular purposes for legislation have been advanced by the City and affirmed through judicial review in the courts below, the Court's inquiry into those purposes is necessarily a deferential one.

C. The City Is Not Obligated By The Constitution To Consider Religiously Motivated Exceptions To Its Regulatory Laws

That the City and the State of Florida have condoned non-sacrificial killings in no way discredits the validity of

[9] *See Edwards v. Aguillard*, 482 U.S. 578, 636-37 (1987) (Scalia, J., dissenting); *Wallace v. Jaffree*, 472 U.S. 38, 86-87 (1985) (Burger, C.J., dissenting); *Palmer v. Thompson*, 403 U.S. at 225 (Black, J.); *id.* at 229 (Blackmun, J., concurring); *O'Brien*, 391 U.S. at 383-84 (Warren, C.J.); *McGowan*, 366 U.S. at 469 (Frankfurter, J., concurring).

[10] *See, e.g., O'Brien*, 391 U.S. at 383-84; *see also Wisconsin Public Intervenor v. Mortier*, 111 S. Ct. 2476, 2488 (1991) (Scalia, J., concurring); *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 527-28 (1989) (Scalia, J., concurring); *Edwards*, 482 U.S. at 610-14 (Scalia, J., dissenting).

the Hialeah ordinances. Petitioners erroneously claim that if the ordinances recognize secular reasons for killing animals, then they must also exempt religious sacrifices. Remarkably, petitioners argue that this result is mandated by *Smith*'s alleged "reinterpretation" of the unemployment compensation cases.

Smith, however, says just the opposite. *Smith* teaches that in promulgating a generally applicable regulation, a state or local government is *not* required to provide an exemption for religious practices.

Respondents in *Smith* argued that the Oregon drug law there at issue should be evaluated under the test derived from *Sherbert v. Verner*, 374 U.S. 398 (1963), *i.e.*, whether the governmental action substantially burdens a religious practice and, if so, whether the action is justified by a compelling governmental interest. This Court rejected the argument and made clear that application of the *Sherbert* test is limited to certain unemployment compensation cases and cases involving the Free Exercise Clause in conjunction with other constitutional protections. *Smith*, 494 U.S. at 881-85. Indeed, as *Smith* itself demonstrates, not even all unemployment compensation cases require the *Sherbert* test.

This case does not involve any "hybrid" constitutional claim. Petitioners challenge the Hialeah ordinances solely on Free Exercise Clause grounds.

Nor can petitioners succeed in their attempt to extend the logic of the unemployment compensation cases to animal cruelty laws. As the Court explained in *Smith*, the rationale behind the unemployment compensation cases is that the "eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment." 494 U.S. at 884. But neither Florida nor Hialeah has established any regime for evaluating individual claims of entitlement to kill or sacrifice animals. The limited categories of permissible animal killing are not dependent on personal circumstances.

Moreover, each of the examples of authorized animal killings is a highly regulated activity.[11] The regulation of religiously motivated animal killing, by comparison, could easily run afoul of the Establishment Clause. Governmental regulation of ritual or ceremonial animal killing would "enmesh government in religious affairs," *Swaggart Ministeries v. California Board of Equalization*, 493 U.S. 378, 395 (1990), and create "comprehensive measures of surveillance and controls," *Lemon v. Kurtzman*, 403 U.S. 602, 621 (1971), on matters "of deep religious significance." *Aguilar v. Felton*, 473 U.S. 402, 414 (1985) (Powell, J., concurring).

In essence, petitioners seek not merely a religious exemption, but an unregulated, unimpeded, and unprecedented license to kill animals. Indeed, if petitioners' interpretation of *Smith* were accepted, petitioners' arguments would lead logically to the conclusion that religiously motivated human sacrifice is protected by the Free Exercise Clause. Laws forbidding human killing contain secular exceptions for, *inter alia*, war, criminal execu-

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[11] *See, e.g.*, Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901-1906 (1988), 9 C.F.R. §§ 302, 313 (1992); Fla. Stat. §§ 828.22-828.26 (1990) (regulating slaughterhouses); Endangered Species Act, 16 U.S.C. §§ 1531-1544 (1988); Fla. Stat. §§ 372.663, 372.671, 372.912, 372.99, 372.75, 372.85, 372.651, 372.66, 372.988, 372.5717 (1991 & 1992 Supp.); Fla. Admin. Code Ann. r. 39-13.001 to 39-13.008, 39-15.004 to 39-16.005, 39-24.002 (regulating hunting, trapping, and fishing); Fla. Stat. §§ 828.05, 828.073, 828.055, 828.058 (1991) (regulating euthanasia); Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2159 (1992), 9 C.F.R. §§ 2.30-2.38 (1992) (regulating medical research); Fla. Stat. § 482.021, 482.132, 482.071 (regulating pest control).

That the City and the State of Florida have chosen to regulate rather than outlaw these other forms of animal killing is of no consequence. Even if these animal killings posed the same threat to the community and were performed with the same level of cruelty—which they do not and are not—the Constitution does not mandate a wholesale antidote. It is sufficient for the City to address social ills one at a time. *See United States v. Lee*, 455 U.S. 252, 259 (1982); *Semler v. Oregon State Bd. of Dental Examiners*, 294 U.S. 608, 610-11 (1935).

tions, withdrawal of life-support systems, self-defense, and defense of others. This does not mean, however, that the State must include religious practice among the acceptable grounds for killing. *See Reynolds*, 98 U.S. at 166 ("Suppose one believed that human sacrifices were a necessary part of religious worship, would it seriously be contended that the civil government under which he lived could not interfere to prevent a sacrifice?").[12]

II. PROTECTING ANIMALS FROM UNNECESSARY KILLING OR CRUELTY IS A COMPELLING STATE INTEREST

Even assuming that the Hialeah ordinances single out religion for special treatment, their prohibitions against sacrificing animals—killings in the context of a public or private ritual or ceremony—are constitutionally justified by a compelling government interest in protecting animals from unnecessary killing or cruelty.

A. Animal Protection Laws Developed More Than A Century Ago

At common law, there was no crime of animal cruelty or unnecessary killing. D. Favre and M. Loring, *Animal Law* 122 (1983). The common law rule was first abrogated in 1641 by the Massachusetts Bay Colony, which, in its first legal code, "The Body of Liberties," prohibited "Tirrany or Crueltie towards any bruite Creatures which

[12] Petitioners' unsupported assertion that "[a]ny resident of Hialeah can kill an unwanted pet in his yard or in his home, so long as he does not do so in a ritual or ceremony," Pet. Br. 13, is simply not correct. Speaking as an organization whose regional office in Tallahassee commonly works with local societies and prosecutors in Florida, *amicus* HSUS can confirm that any such incident would be investigated and referred to the state's attorney for prosecution as an unnecessary killing. By way of example, cases in Pinellas County involving a farmer killing his horse by hitting it on the head with a "2 x 4," the owner of peacocks shooting them in his backyard, and a homeowner trapping and drowning squirrels have been successfully prosecuted, apparently without reaching the appellate courts. One's own animals are not excluded from the protections of § 828.12.

are usuallie kept for man's use." S. Morison, *Builders of the Bay Colony* 232 (1930). Thus, the Bay Colony, in keeping with John Winthrop's vision of it as a "Citty upon a hill" with the eyes of all people upon it, took "first place among the governments of the Western world for having elevated mercy into law." *Id.* at 73; G. Carson, *Man, Beasts, and Gods* 71 (1972).

After the establishment of the United States, the states and territories, beginning with New York in 1828, progressively enacted anti-cruelty statutes. The most influential statute was New York's 1867 statute, upon which the anti-cruelty legislation of forty-one states and the District of Columbia has been modelled. E. Leavitt & D. Halverson, "The Evolution of Anti-Cruelty Laws in the United States," in *Animals and Their Legal Rights* 5 (4th ed. 1990). New York's 1867 statute was landmark legislation, extending its protection to all living animals, defining a broad battery of crimes (including needless killing), imposing an affirmative duty to provide food and water to any animals in human custody, and providing for enforcement by private humane agents. *Id.* at 6-7.

By 1913, every state and territory of the Union (except the Virgin Islands) had enacted basic anti-cruelty laws. Twenty-eight of these statutes expressly outlawed not only broad categories of inhumane treatment, but also, variously stated, "unnecessary," "unjustifiable," or "needless" killing of animals. E. Leavitt & D. Halverson, *supra*, 13-47. In keeping with their broad remedial purposes, the basic anti-cruelty laws were successfully applied to moderate or eliminate once-commonplace abuses of animals employed in agriculture, ranching, commerce, and transportation. R. McCrea, *The Humane Movement* 59-89 (1910). These laws, along with the rise and spread of societies for the prevention of cruelty to animals, worked substantial changes in the moral climate of this country.

B. Protecting Animals From Unnecessary Killing Or Cruelty Is A Fundamental Public Policy

In keeping with a remark attributed to Mahatma Gandhi that the moral progress of a people can be measured by its treatment of animals (*see* J. Wynne-Tyson, *The Extended Circle: A Dictionary of Humane Thought* 91 (1985)), a distinctive hallmark of American law and civilization is the steadily enhanced protection afforded to animals since colonial times, and the concurrent narrowing of justifications for killing or otherwise exploiting animals, even for purposes related to tangible, objectively established human needs—such as food, clothing, and health and safety. The law has long recognized animal protection laws as hallmarks of progress and as indications of a shift of public standards of behavior towards animals.

> It is of common knowledge that within the past few years, as incident to the progress of civilization, and as the direct outgrowth of that tender solicitude for the brute creation which keeps pace with man's increased knowledge of their life and habits, laws, such as the one under consideration, have been enacted by the various states having the common object of protecting these dumb creatures from ill treatment by man.

Waters v. People, 46 P. 112, 113 (Colo. 1896); *see Stephens v. State*, 3 So. 458 (Miss. 1888) ("laws for the protection of dumb brutes from cruelty, are, in my judgment, among the best evidence of the justice and benevolence of men").

The extended comments of the Supreme Court of Arkansas, in construing the "needless killing" provision of Arkansas' early animal protection law, confirm the sense of progress and enlightenment that these laws inspired. After a lengthy discussion of the development of anti-cruelty laws, the court noted that the laws:

> must be considered wholly irrespective of property, or of the public peace, or of the inconvenience of nuisances. . . . It is in this view that such acts are

> to be construed, to give them, if possible, some beneficent effect, without running into such absurdities as would in the end, make them mere dead letters . . . . So construed, this class of laws may be found useful in elevating humanity, by enlargement of its sympathy with all God's creatures, and thus society may be improved.

Grise v. State, 37 Ark. 456, 458-59 (1881).

Thus, the original anti-cruelty laws are evidence of an important and historic commitment by American society toward the general protection of animals, traditional property values and economic interests notwithstanding. Later courts simply and confidently declared the existence of a public policy against unnecessary cruelty. *See Humane Soc'y of Rochester v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986); *Commonwealth v. Higgins*, 178 N.E. 536, 537 (Mass. 1931). The continued advancement of this policy is reflected in the district court's opinion. *See* Pet. App. A44-A45.

Many states have confirmed and broadened the commitment to this public policy by going beyond the core anti-cruelty statutes to strike at customs, sports, or practices once deemed reputable, or at least not illegal, but now considered unacceptable in the twentieth century United States.[13] Florida's body of statutory and regulatory law is itself an example of the breadth of this public policy at work.[14] On a national level a series of federal laws

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[13] For example, forty-two states now not only outlaw dogfighting but punish the offense as a felony. Cockfighting is specifically outlawed in forty-four states. C. Stevens & D. Halverson, "Fighting and Baiting," in *Animals and Their Legal Rights* 152-53 (4th ed. 1990).

[14] "Kindness to animals" is an expressly required part of the public school curriculum. Fla. Stat. Ann. § 233.061 (1992 Supp.). State educational policy forbids dissection of live animals as well as physical harm to animals used in school biology experiments, encourages observational studies of animals, and requires live animals used in schools to be housed and cared for humanely. Fla. Stat. Ann. § 233.0674 (1989). Sterilization of dogs and cats released from animal shelters is required to reduce unwanted surplus animals and the "privation and death" suffered by such animals. Fla. Stat.

has clearly established and embodied a federal public policy in favor of the protection of animals from cruelty.[15]

Underscoring the public policy favoring animal protection in this country are the legislative grants of special police powers to private humane societies to enforce the anti-cruelty laws, in addition to the normal enforcement jurisdiction residing in local police and prosecutors.[16] This double-layering of enforcement systems is a further testament to the importance of animal protection in the legal culture of this country, and is a feature virtually unique to animal protection law. Indeed, the depth of public commitment to the efforts begun by the Massachusetts Bay Colony is evidenced by the public willingness to support the more than two thousand animal protection organizations that exist in the United States today.

Ann. § 823.15 (1992 Supp.). Humane methods of euthanasia of shelter animals are mandated and specified. Fla. Stat. Ann. § 828.058 (1992 Supp.). Fighting or baiting animals is a felony. Fla. Stat. Ann. § 828.122 (1992 Supp.). A civil statute, apparently grounded in the notion that animals, like children, are ultimately wards of the state, provides for seizure and custody of abused or neglected animals pending a hearing in court to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal. Fla. Stat. Ann. § 828.073 (1992 Supp.) Steel-jaw leghold traps are banned throughout the State. Fla. Admin. Code Ann. r. 39-24.002(3) (1991).

[15] *See, e.g.*, Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (1992); Twenty-Eight Hour Law, 45 U.S.C. §§ 71-74 (1988); Humane Methods of Slaughter Act, 7 U.S.C. §§ 1901-1906 (1988); Horse Protection Act, 15 U.S.C. §§ 1821-1831 (1988); Wild and Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (1988 & 1990 Supp.); and Marine Mammals Protection Act, 16 U.S.C. §§ 1361-1407 (1988 & 1990 Supp.).

[16] The degree of such private enforcement authority ranges from the power to investigate and collect evidence to assist prosecutorial efforts, *see* Cal. Corp. Code § 10404 (West 1991), Fla. Stat. Ann. § 828.03 (1992 Supp.), to the seizure of abused animals, with or without a warrant, *see* Fla. Stat. Ann. § 828.073 (1992 Supp.); N.Y. Agric. & Mkts. Law § 373 (McKinney 1991); Va. Code Ann. § 3.1-796.115 (1991 Supp.), to full investigatory and arrest powers, *see* D.C. Code Ann. § 22-806 (1981); N.Y. Agric. & Mkts. Law § 371 (McKinney 1991); Va. Code Ann. § 3.1-796.109 (1991 Supp.), to the hiring of private prosecutors to prosecute animal cruelty offenders without assent from district attorneys. *See* Ohio Rev. Code Ann. § 2931.18 (1991 Supp.).

C. Statutes Protecting Animals Directly Serve The State Interest In Preserving Public Morals And Protecting Human Life

Underlying petitioners' arguments about the compelling state interest test is the erroneous assumption that a broad and definite line separates the state interest in human life, safety, and health from the state interest in animal life. This assumption in turn lays the groundwork for a false balancing test wherein *any* free exercise interests of *any* religion must perforce outweigh the state interest in protecting animals. The courts have not agreed with that assumption.

For over a century, American jurisprudence has acknowledged that laws protecting animals from cruelty are justified by the link between such cruelty and violence among humans. Such laws tend to lessen violence and brutality in society by suppressing conduct that desensitizes human sympathies and devalues sentient life. In *Stephens v. State*, 3 So. 458 (Miss. 1888), the court noted:

> Cruelty to [animals] manifests a vicious and degraded nature, and it tends inevitably to cruelty to men. . . . Often their beauty, gentleness and fidelity suggest the reflection that it may have been one of the purposes of their creation and subordination to enlarge the sympathies and expand the better feelings of our race. But, however this may be, human beings should be kind and just to dumb brutes; if for no other reason than to learn how to be kind and just to each other.

Id. at 459. Other cases echo this concern. In holding that setting hounds upon a fox constituted the crime of abetting unnecessary suffering or cruelty, the Supreme Judicial Court of Massachusetts stated: "The offense is against the public morals, which the commission of cruel and barbarous acts tends to corrupt." *Commonwealth v.*

Turner, 14 N.E. 130, 132 (Mass. 1887). In an earlier Massachusetts case, *Commonwealth v. Tilton*, 49 Mass. (8 Met.) 232 (1844), Chief Justice Shaw described cock-fighting

> [a]s being barbarous and cruel, leading to disorder and danger, and tending to deaden the feelings of humanity, both in those who participate in it, and those who witness it . . . .

Id. at 234-35; *see State v. Porter*, 16 S.E. 915 (N.C. 1893); *Hunt v. State*, 29 N.E. 933 (Ind. App. 1892). In *Waters v. People*, 46 P. at 113, the Colorado Supreme Court upheld a conviction for the "needless" mutilation and killing of doves by a gun club, noting that the aim of the state's anti-cruelty law "is not only to protect these animals, but to conserve public morals, both of which are undoubtedly proper subjects of legislation."

The link between permitting violence toward animals and engendering violence toward human beings, which nineteenth century jurists readily accepted, is confirmed by modern sociological research. A growing body of evidence suggests that violence toward animals in childhood may be a leading indicator and precursor of adult criminal and antisocial behavior, that animal abuse within families often goes hand in hand with spousal and child abuse, that permitting a child to abuse animals without punishment or correction can lead to progressively more violent and antisocial acts as the child develops, and that children exposed to animal abuse are being taught to devalue sentient life. *See generally* American Humane Association, *Report on the Summit on Violence Towards Children and Animals* (1991); R. Lockwood and G. Hodge, "The Tangled Web of Animal Abuse: The Links Between Cruelty to Animals and Human Violence," 31 *Humane Society News* No. 3, at 10 (Summer 1986). As the district court found, "[t]he evidence at trial established that exposure to the ritual sacrifice of animals imperils the psychological well-being of children and increases the likelihood that a child will become more aggressive and violent." Pet. App. A44.

Thus, the state interest in protecting animals from cruelty and unnecessary death is part and parcel of the broader, irreducible, and paramount state interest in societal peace, order, health, and safety. It is against *that* very concrete interest that petitioners' desire to kill animals for reasons of abstract religious ideology must be weighed.

D. The Lawful Purposes For Killing Animals Do Not Make The Public Policy Against Unnecessary Killing Or Cruelty Any Less Compelling

Petitioners contend that no generally applicable ban on killing animals exists in Hialeah or Florida. *See* Pet. Br. 12. They then list a number of purposes for which Florida law expressly permits animals to be killed, raise a number of hypothetical situations involving the killing of animals for which no reported prosecutions can be found,[17] and then conclude that religious faith is "almost the only unacceptable reason" for killing animals in Florida, arguing both that "[t]his is rank discrimination against religion," *id.* at 13, and that the various lawful purposes for killing or inflicting pain upon animals decisively undermine any compelling state interest, *id.* at 37-40. A fair and comprehensive reading of Florida's laws relating to animals belies these contentions.

First, Florida's anti-cruelty statute, Fla. Stat. Ann. § 828.12, upon which the Hialeah ordinances are based, *is* a general ban on killing (as well as tormenting, overworking, beating, or mutilating) animals in the State,

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[17] The absence of reported prosecutions of particular kinds of abuses proves little, since the vast majority of cruelty cases are resolved at the field level by humane investigators delivering a warning of possible prosecution or educating the perpetrator. In 1907, *amicus* ASPCA, out of 6,567 complaints of cruelty received and investigated, made arrests and prosecutions in 1,015, a typical percentage. R. McCrea, *The Humane Movement*, 63-65 (1910). This pattern continues to hold today. E. Leavitt & D. Halverson, "Animal Protective Organizations and Law Enforcement Agencies," *Animals and Their Legal Rights* 258 (4th ed. 1990); ASPCA, 1990 Annual Report 9.

qualified only by reasons of necessity. By force of the definitional section, Fla. Stat. Ann. § 828.02 (1976), the ban protects "every living dumb [*i.e.*, nonhuman] creature." The statute could not be more generally applicable on its face.

Second, the various *de jure* exceptions to the general ban are almost invariably related to basic, tangible, objectively established human needs (food, clothing, the prevention or treatment of disease), which in turn are grounded in the same, overriding policy considerations of public health, safety, and order, in the face of which religious practices must yield.

Florida, like many other states, excepts otherwise cruel acts done "in the interest of medical science" from the coverage of the anti-cruelty statute. Fla. Stat. Ann. § 828.02. Such provisions reflect a policy judgment by the legislatures of the overriding importance of regulated biomedical research in the prevention and treatment of diseases, both human and animal.

Hunting is a traditional food-gathering activity that continues to be practiced as such. Obtaining meat remains the reason most frequently offered by hunters for this activity.[18] The Florida Game and Fresh Water Fish Commission in Florida (not hunting, fishing, and trapping per se, as the Church would have it, *see* Pet. Br. 12), does have constitutional status by force of Article IV, § 9 of the Florida Constitution. However, "management, protection, and conservation of wild animal life and fresh water aquatic life" are the only purposes alluded to in § 9, not recreation. Indeed, a rationale for hunting often echoed by state fish and game authorities, and hunting organizations, is the prevention of crowding, disease, and malnutrition caused by overpopulation. *See, e.g., Holbrook Island Sanctuary v. Inhabitants of Town of Brooksville*, 214 A.2d 660, 664 (Me. 1965);

[18] S. Kellert, "Attitudes and Characteristics of Hunters and Anti-Hunters and Related Policy Suggestions" (paper presented to the U.S. Fish and Wildlife Service (1976) and to the Hunter Safety Education Conference, Charleston, S.C. (1978)).

W. Robinson, "The Case for Hunting," and H. Nelson, "The Case for Hunting on National Wildlife Refuges," in *Advances in Animal Welfare Science 1986/87* 273 and 283 (M. Fox & L. Mickley eds., 1986). It is thus simplistic to contend that hunting, fishing, and trapping, as administered by the states, represent a fatal inconsistency to the existence of a humane public policy. Moreover, sport hunting has been under increasing attack over the past thirty years as public sensibilities toward animals continue to evolve. This phenomenon is itself a testament to the protective public policy towards animals.

Laws permitting discretionary euthanasia of injured, sick, or abandoned animals, *see e.g.*, Fla. Stat. Ann. §§ 828.05, 828.055, 828.058, spring from and promote the public policy of humane animal treatment. Contrary to petitioners' argument, Pet. Br. 13, the purpose of these statutes—to terminate or prevent animal suffering—is hardly inconsistent with such a policy. Sections 828.02 and 482.021 allow the extirpation of vermin, and are obviously grounded in fundamental considerations of health, safety, and protection of property.

As a reflection of public policy, then, the corpus of Florida law relating to animals is most accurately described as imposing a general condemnation against killing or abusing animals without necessity—the historic anti-cruelty statute. That general condemnation has been reinforced by an accretion of specialized statutes targeting particular abuses such as animal fighting, providing procedures for removing animals from unworthy owners, administering the shelter system, and mandating humane education. Deviations from this protective statutory structure are not arbitrarily permitted, but either relate to basic human needs—food, clothing, disease prevention and treatment, protection of property—or spring from the same public policy of humane treatment—euthanasia of unwanted or injured animals. Thus, the exceptions serve the same overriding state interests in human health, safety, and public order to which religious practices themselves must yield.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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